



COPYRIGHT OFFICE

DURING FISCAL 2001, the Copyright Office continued to administer U.S. copyright laws and provide legal and policy assistance to Congress and to the executive branch on national and international issues. The office created and maintained a public record of copyright registrations and recorded documents to serve owners and users of copyrighted works, while it continued to administer statutory licenses and Copyright Arbitration Royalty Panels (CARPs). Several major initiatives were launched during the year in an effort to reengineer the office's core business processes and leverage information technology to increase the efficiency of operations and the timeliness of public services.

During the year, the Copyright Office received 590,091 claims to copyright covering more than 800,000 works. The office registered 601,659 claims, including some submitted in fiscal 2000. The Copyright Office Electronic Registration, Recordation, and Deposit System (CORDS) continued to be used during the year to process more than 21,000 full electronic claims in textual works and music. Some 15,242 documents covering more than 300,000 titles were recorded, and the online public record grew with the cataloging of an additional 548,458 registrations. The Copyright Office forwarded 728,034 copies of works, with a net worth of \$31,857,394, to the Library of Congress for its collections and exchange programs, including 277,752 pieces that were received

This chapter is excerpted from a fuller report that the Register of Copyrights sends annually to Congress.



The enhanced Copyright Office Web site offers information to the copyright community and the general public.

from publishers under the mandatory deposit provisions of the copyright law. The office also processed 27,324 filings from cable operators, satellite carriers, and manufacturers or importers of digital audio-recording devices and media, and it processed claims to the various royalty pools. The Licensing Division collected \$189 million in royalty fees (almost 90 percent received through electronic funds transfer) and distributed royalties totaling \$264,751,063.

The Copyright Office responded to 339,648 requests for direct reference services. The Copyright Office's Web site continued to play a key role in disseminating information to the copyright community and to the general public, logging 12.1 million hits during the year, a 28 percent increase over the prior year. The Web site was enhanced with the development of a Web version of the copyright search function to use in searching the office's public records. The office published twenty-eight issues of the electronic publication *NewsNet*, which has 5,121 subscribers, an 18 percent increase over last year.

BUSINESS PROCESS REENGINEERING AND INFORMATION TECHNOLOGY ACTIVITIES

The Copyright Office continued its extensive multiyear effort to reengineer its principal public services of registering claims, recording documents, acquiring works for the Library of Congress, answering public requests, maintaining records, and accounting.

In September, the Copyright Process Reengineering Team, made up of twelve copyright staff members and facilitated by PricewaterhouseCoopers

LLP (PwC), developed six new processes, including a redesign of the organization, facilities, and technology, for the office's principal public services. The team's redesign recommendations were presented to the Business Process Reengineering (BPR) steering committee at an off-site retreat in April. The steering committee adopted the recommendations with some modifications, and the contractor used the proposal to create a BPR implementation plan, which was delivered in June.

The new processes were organized around outcomes to ensure that all activities focus on the final output to be produced. The new processes are for the following activities:

- Maintain accounts
- Answer requests
- Record documents
- Acquire deposits
- Register claims
- Receive mail

The redesign recommendation included the replacement of current labor- and paper-intensive processes with automated systems that encourage the use of electronic submissions and processing. New information technology (IT) systems will automate the tracking and processing of materials throughout the office, support the six redesigned processes, and include systems that integrate services and distribute and share information across the Copyright Office and with the Library.

In June, the office awarded a second contract to PwC to assist with the BPR implementation plan. This contract, which runs through June 2002, includes plans to define the redesigned processes to an operational level, draft procedures manuals, create a training plan, and develop a reorganization package, including position descriptions for the new processes.

Recognizing the need for a concomitant reengineering of IT systems to support the reengineered business processes, the Register of Copyrights on April 25, 2001, appointed an Information Systems Working Group. This group was tasked with assessing how the Copyright Office presently uses information technology and developing an IT strategy that allows the office to support the reengineered business processes and provide more services electronically. A plan was developed for the continued operation of existing copyright systems during the transition to new systems. On July 26, 2001, the Copyright Office formally began reengineering its automated systems by issuing a request for quotation for contract assistance to complete an IT requirements analysis, which will also include CORDS. On September 25, 2001, a contract was awarded to conduct the analysis and complete the deliverables, which include an IT implementation plan, by June 2002.

REGULATORY ACTIVITY

The Copyright Office completed a number of major rulemaking proceedings during the year. The office issued final regulations to establish a new procedure for group registration of published photographs. The regulations permit the registration of an unlimited number of photographs published within the same calendar year on one application with one fee, provided that the photographs were all taken by the same photographer and that the copyright claimant is the same for all.

Pursuant to section 1201 of the Digital Millennium Copyright Act (DMCA), the Copyright Office issued a rulemaking to determine whether any particular classes of works would be exempt from the general prohibition against circumventing technological measures that are used to protect access to copyrighted works. The Register of Copyrights recommended, and the Librarian of Congress approved, two exemptions: (1) compilations consisting of lists of Web sites blocked by filtering software applications and (2) literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage, or obsolescence. The Copyright Office posted the entire record of the rulemaking on its Web site. This recommendation concluded the first of the reviews mandated by Congress in the DMCA.

LEGISLATION AND OTHER LEGAL ACTIVITY

During the year, Register of Copyrights Marybeth Peters testified at three separate congressional hearings: two held by the House Subcommittee on Courts, the Internet, and Intellectual Property, and one held by the Senate Committee on the Judiciary. Those hearings covered oversight of the Copyright Office and the Technology, Education, and Copyright Harmonization (TEACH) Act to update the law to take into account current developments in online distance education.

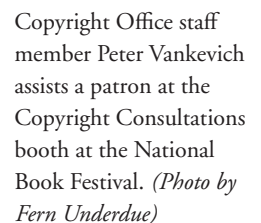
In August 2001, the Register of Copyrights delivered to Congress the report required under section 104 of the DMCA. The report evaluated the effects of advances in electronic commerce and associated technologies, as well as the amendments made by the DMCA to sections 109 and 117 of Title 17. The report was the product of two rounds of written comments from the public, a daylong public hearing, and extensive deliberations by the Register of Copyrights in conjunction with the Policy and International Affairs staff and the Copyright General Counsel's staff. Hearings on the report had been scheduled in the House Subcommittee on Courts, the Internet, and Intellectual Property

in September and October 2001 but were postponed as a result of the events of September 11.

In response to a final rule, which the office published on December 11, 2000, broadcasters of AM/FM radio stations brought an action (*Bonneville v. Peters*) against the Register of Copyrights and the Recording Industry Association of America. The action sought judicial review of the office's determination that AM/FM broadcast signals transmitted simultaneously over a digital communications network, such as the Internet, were not exempted by 17 *United States Code* § 114(d)(1)(A). The broadcasters claimed that the final rule exceeded the office's statutory authority. The U.S. District Court for the Eastern District of Pennsylvania granted summary judgment, holding that the office had sufficient statutory authority to issue its final rule. Moreover, the court not only observed that the office's rule was reasonable, but also that the office reached the same conclusion as the court would have had it not been required to defer to the office after fully examining the statute, legislative history of the statute, and congressional intent. The plaintiffs have appealed.

The one copyright case heard by the Supreme Court this term was *New York Times v. Tasini*, a case that involved the implications of publishing in a digital age. Freelance authors sued the petitioners, who are newspaper publishers and database owners, for copyright infringement. The authors, who gave the newspaper publishers permission to publish their articles in newspapers, argued that the publishers exceeded the scope of that permission when the publishers and database owners also put copies of the articles in both CD-ROM databases and NEXIS, a database that is available through the Internet. The publishers argued that they were permitted to reproduce the articles in the databases under a limited presumptive privilege found in 17 *United States Code* § 201(c). The U.S. District Court for the Southern District of New York had ruled in favor of the publishers, and the U.S. Court of Appeals for the Second Circuit in favor of freelance authors.

Following those lower court rulings, the office participated in discussions with the Justice Department and the Patent and Trademark Office about whether the federal government should file an *amicus* brief. Although the office supported an *amicus* brief on behalf of the respondents, the Justice Department determined that the government should not submit one. Ultimately, the Supreme Court agreed with the Court of Appeals and ruled in favor of the freelance authors, finding that the newspaper publishers and database owners exceeded the scope of the limited privilege to reproduce articles published in newspapers when they put the articles in the databases.



In *Universal City Studios, Inc. v. Corley*, the defendant operates and publishes a magazine and Web site for computer hackers that posted a decryption code known as DeCSS for downloading by the public. The code was capable of decrypting the Content Scrambling System (CSS) employed as a technological measure to protect access to motion pictures fixed on digital versatile discs (DVDs). The defendant's Web site also established links to several other Web sites that also claimed to offer DeCSS for download. The plaintiff brought suit under section 1201 of Title 17, claiming that the defendant's posting of DeCSS violated the provisions prohibiting the trafficking or distribution of circumvention devices to the public. The district court preliminarily enjoined the defendant from posting the DeCSS software on the Web site. Following a trial on the merits, the district court held that CSS effectively controls access to copyrighted works within the meaning of section 1201(a)(2). Having determined that the defendant violated the antitrafficking provision of section 1201(a)(2),

the court additionally enjoined the defendant from linking to other Web sites offering DeCSS. The defendant appealed to the U.S. Court of Appeals for the Second Circuit, arguing *inter alia* that section 1201 was unconstitutional.

The office advised the Justice Department on *Eldred v. Ashcroft* (formerly *Eldred v. Reno*), in which the plaintiffs challenged the constitutional validity of the Copyright Term Extension Act of 1998. The act extended the copyright term for works that were still under copyright protection in the United States on the effective date of the Copyright Term Extension Act of 1998. The plaintiffs argued that the extension unlawfully took works that would have gone into the public domain out of the reach of the public for additional time. The U.S. Court of Appeals for the D.C. Circuit held that the statutory extension of copyright duration was constitutional because there was no free speech right to exploit copyrighted works and the Copyright Clause preamble did not limit extension of the copyright term. The plaintiffs filed a motion for reconsideration and an *en banc* hearing. Staff attorneys drafted most of the response to this motion. The court dismissed the motion, and plaintiffs have filed a petition for *certiorari*.

The Copyright Office assisted and consulted with the Justice Department and the U.S. Attorney for the Southern District of New York in an intervention defending the constitutionality of the statute. The Second Circuit heard oral arguments in the case, and a decision is pending.

During the year, the Copyright Office was involved in five CARP proceedings. Three of the five proceedings involved setting rates and terms for various compulsory licenses. The other two dealt with the distribution of royalty fees collected under the Audio Home Recording Act of 1992 and under section 111 of Title 17, the cable compulsory license.

INTERNATIONAL ACTIVITIES

The Copyright Office continued to work in tandem with the executive branch on international matters and with agencies such as the U.S. Trade Representative, the Patent and Trademark Office, the State Department, and the Department of Commerce.

The Register of Copyrights and the Policy and International Affairs staff were involved in a December 2000 diplomatic conference, which was held in Geneva, Switzerland, under the auspices of the World Intellectual Property Organization (WIPO). The purpose of the conference was to seek international protection for audiovisual performers, principally television and screen actors. The office also assisted with preparations for the meetings of the WIPO Inter-

governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore.

The Register of Copyrights led a Copyright Office delegation to China in September at the invitation of the National Copyright Administration of China. The delegation discussed China's implementation of its World Trade Organization commitments, copyright enforcement, and developments in U.S. copyright law.

In June, the Policy and International Affairs staff participated in the U.S. delegation to a diplomatic conference under the auspices of the Hague Conference on Private International Law, which met to consider a draft convention on jurisdiction and foreign judgments in civil and commercial matters. The office sponsored a daylong roundtable discussion that focused on intellectual property aspects of the draft convention. The convention would create harmonized rules of jurisdiction of international civil cases among its parties, as well as common rules for recognizing and enforcing the resulting judgments in other member countries.

Representatives from the Copyright Office were members of the U.S. delegation to the Intellectual Property Negotiating Group of the Free Trade Area of the Americas, which met in Miami, Florida, in October 2000. The staff members involved were instrumental in preparations, including in drafting U.S. treaty proposals. The goal of the negotiating group is to prepare and finalize an intellectual property chapter for a Free Trade Area of the Americas Agreement. The overall agreement is to be completed by 2005.

The office also actively participated in many additional bilateral negotiations and consultations during the year, including those with Chile, China, Hong Kong, Israel, Japan, Jordan, Macau, Malaysia, the Philippines, Russia, Singapore, South Korea, Taiwan, and Ukraine. Issues ranged from enforcement to copyright law revision to inclusion of comprehensive intellectual property norms in free trade agreements. Staff members met on a regular basis with foreign officials and visitors interested in learning about the U.S. copyright system and in exchanging information about topics of mutual concern.

In November 2000, in conjunction with WIPO, the office's International Copyright Institute (ICI) held an International Symposium on the Effect of Technology on Copyright and Related Rights. Seventeen copyright experts and government officials from around the world attended the symposium. The ICI is designed to further international understanding and support of strong copyright protection, including the development of effective copyright laws and enforcement overseas.